

current reliance on consultants for these functions and significantly reducing operational costs for the rural LECs.¹² T-Mobile comments that new porting rules outweigh any potential burdens because an efficient porting process will ultimately lower all providers' costs, specifically mentioning the wireless-to-wireless process as an example.¹³

9. We agree with these assertions, and have considered the economic impact on small entities and what ways are feasible to minimize the burdens imposed on those entities. To the extent feasible, we have implemented those less burdensome alternatives, and we discuss these alternatives in Section E, *infra*.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁷

11. *Small Businesses*. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.¹⁸

12. *Small Organizations*. Nationwide, there are approximately 1.6 million small organizations.¹⁹ A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."²⁰

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

13. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer

¹² See Sprint Nextel Comments at 14-15.

¹³ See T-Mobile Comments at 7.

¹⁴ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

¹⁵ 5 U.S.C. § 601(6).

¹⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

¹⁷ 15 U.S.C. § 632.

¹⁸ See SBA, Office of Advocacy, "Frequently Asked Questions," <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

¹⁹ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

²⁰ 5 U.S.C. § 601(4).

employees) and “is not dominant in its field of operation.”²¹ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.²² We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

14. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²³ According to Commission data,²⁴ 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

15. *Competitive LECs, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ According to Commission data,²⁶ 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are “Other Local Service Providers.” Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our proposed action.

16. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁷ According to Commission data,²⁸ 300 carriers have

²¹ 15 U.S.C. § 632.

²² Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

²³ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

²⁴ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3, Page 5-5 (Aug. 2008) (*Trends in Telephone Service*). This source uses data that are current as of November 1, 2006.

²⁵ 13 C.F.R. § 121.201, NAICS code 517110.

²⁶ *Trends in Telephone Service* at Table 5.3.

²⁷ 13 C.F.R. § 121.201, NAICS code 517110.

²⁸ *Trends in Telephone Service* at Table 5.3.

reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

17. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁹ According to Commission data,³⁰ 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

18. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³¹ According to Commission data,³² 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

19. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³³ According to Commission data,³⁴ 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

20. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁵ According to Commission data,³⁶ 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

21. *800 and 800-Like Service Subscribers.*³⁷ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications

²⁹ 13 C.F.R. § 121.201, NAICS code 517310.

³⁰ *Trends in Telephone Service* at Table 5.3.

³¹ 13 C.F.R. § 121.201, NAICS code 517310.

³² *Trends in Telephone Service* at Table 5.3.

³³ 13 C.F.R. § 121.201, NAICS code 517110.

³⁴ *Trends in Telephone Service* at Table 5.3.

³⁵ 13 C.F.R. § 121.201, NAICS code 517310.

³⁶ *Trends in Telephone Service* at Table 5.3.

³⁷ We include all toll free number subscribers in this category, including those for 888 numbers.

Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁸ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.³⁹ According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

b. International Service Providers

22. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.⁴⁰ The second has a size standard of \$25 million or less in annual receipts.⁴¹ The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.⁴²

23. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁴³ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.⁴⁴ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.⁴⁵ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

24. The second category of All Other Telecommunications comprises, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and

³⁸ 13 C.F.R. § 121.201, NAICS code 517310.

³⁹ *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, and 18.7.

⁴⁰ 13 C.F.R. § 121.201, NAICS code 517410.

⁴¹ 13 C.F.R. § 121.201, NAICS code 517919.

⁴² 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (2002).

⁴³ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

⁴⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

⁴⁵ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

receiving telecommunications from, satellite systems.”⁴⁶ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.⁴⁷ Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.⁴⁸ Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

c. Wireless Telecommunications Service Providers

25. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

26. *Wireless Service Providers (Except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.⁴⁹ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”⁵⁰ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁵¹ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.⁵² Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁵³ For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.⁵⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁵⁵ Thus, we estimate that the majority of wireless firms are small.

⁴⁶ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

⁴⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

⁴⁸ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

⁴⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁵⁰ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁵¹ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁵² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

⁵³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁵⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

⁵⁵ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

27. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of “Cellular and Other Wireless Telecommunications.”⁵⁶ Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.⁵⁷ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”⁵⁸ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁵⁹ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.⁶⁰ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁶¹ For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.⁶² Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁶³ Thus, we estimate that the majority of wireless firms are small.

28. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁶⁴ A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁶⁵ The SBA has approved this definition.⁶⁶ An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985

⁵⁶ 13 C.F.R. § 121.201, NAICS code 517212.

⁵⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”;
<http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁵⁸ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”;
<http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”;
<http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁵⁹ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁶⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

⁶¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁶² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

⁶³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁶⁴ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (*Paging Second Report and Order*); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

⁶⁵ *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁶⁶ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998) (*Alvarez Letter 1998*).

were sold.⁶⁷ Fifty-seven companies claiming small business status won 440 licenses.⁶⁸ A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁶⁹ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁷⁰

29. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 281 carriers reported that they were engaged in the provision of “paging and messaging” services.⁷¹ Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.⁷² We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

30. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).⁷³ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁷⁴ According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.⁷⁵ Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.⁷⁶ We have estimated that 222 of these are small under the SBA small business size standard.

31. *Broadband Personal Communications Service*. The broadband personal communications services (“PCS”) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁷⁷ For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷⁸ These small business size

⁶⁷ See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁶⁸ See *id.*

⁶⁹ See *Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2002).

⁷⁰ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁷¹ *Trends in Telephone Service* at Table 5.3.

⁷² *Id.*

⁷³ 13 C.F.R. § 121.201, NAICS code 517210.

⁷⁴ *Id.*

⁷⁵ *Trends in Telephone Service* at Table 5.3.

⁷⁶ *Id.*

⁷⁷ See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850-7852, paras. 57-60 (1996) (*PCS Report and Order*); see also 47 C.F.R. § 24.720(b).

⁷⁸ See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

standards, in the context of broadband PCS auctions, have been approved by the SBA.⁷⁹ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁸⁰ In 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.⁸¹

32. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses.⁸² Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.⁸³ Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.⁸⁴ Of the 14 winning bidders, six were designated entities.⁸⁵ In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction

33. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.⁸⁶ This auction, which was designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.⁸⁷ Four winning bidders that identified themselves as very small businesses won 17 licenses.⁸⁸ Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

⁷⁹ See *Alvarez Letter 1998*.

⁸⁰ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. Jan. 14, 1997).

⁸¹ See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999).

⁸² See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

⁸³ See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

⁸⁴ See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

⁸⁵ *Id.*

⁸⁶ See *AWS-1 and Broadband PCS Procedures*, Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

⁸⁷ *Id.* at 7521-22.

⁸⁸ See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period*, Public Notice, 23 FCC Rcd 12749-65 (2008).

2. Cable and OVS Operators

34. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”⁸⁹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.⁹⁰ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.⁹¹ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.⁹² Thus, the majority of these firms can be considered small.

35. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.⁹³ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.⁹⁴ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.⁹⁵ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.⁹⁶ Thus, under this second size standard, most cable systems are small.

36. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed

⁸⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

⁹⁰ 13 C.F.R. § 121.201, NAICS code 517110.

⁹¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

⁹² *Id.* An additional 61 firms had annual receipts of \$25 million or more.

⁹³ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

⁹⁴ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

⁹⁵ 47 C.F.R. § 76.901(c).

⁹⁶ Warren Communications News, *Television & Cable Factbook 2008*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

\$250,000,000.”⁹⁷ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁹⁸ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.⁹⁹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,¹⁰⁰ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

37. *Open Video Systems (OVS)*. The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.¹⁰¹ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,¹⁰² OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”¹⁰³ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹⁰⁴ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹⁰⁵ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁰⁶ Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.¹⁰⁷ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or

⁹⁷ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

⁹⁸ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

⁹⁹ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

¹⁰⁰ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.909(b).

¹⁰¹ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report*, 24 FCC Rcd 542, 606 ¶ 135 (2009) (*Thirteenth Annual Cable Competition Report*).

¹⁰² See 47 U.S.C. § 573.

¹⁰³ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹⁰⁴ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁰⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹⁰⁶ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁰⁷ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

local OVS franchises.¹⁰⁸ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

3. Internet Service Providers

38. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (e.g. cable and DSL, ISPs), or over client-supplied telecommunications connections (e.g. dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,¹⁰⁹ which has an SBA small business size standard of 1,500 or fewer employees.¹¹⁰ The latter are within the category of All Other Telecommunications,¹¹¹ which has a size standard of annual receipts of \$25 million or less.¹¹² The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.¹¹³ That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.¹¹⁴ Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999.¹¹⁵ Consequently, we estimate that the majority of ISP firms are small entities.

39. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)."¹¹⁶ The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts.¹¹⁷ However, data has not yet been collected under the new size standard, and so we refer to data collected under the previous size standard, \$6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.¹¹⁸ Of these, 138 had annual receipts of under \$5 million, and an additional four firms had

¹⁰⁸ See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07, para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

¹⁰⁹ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹¹⁰ 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

¹¹¹ U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

¹¹² 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

¹¹³ U.S. Census Bureau, "2002 NAICS Definitions, "518111 Internet Service Providers"; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹¹⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

¹¹⁵ An additional 45 firms had receipts of \$25 million or more.

¹¹⁶ U.S. Census Bureau, "2002 NAICS Definitions: 519190 All Other Information Services," available at <http://www.census.gov/epcd/naics02/def/ND519190.HTM> (visited Apr. 7, 2010).

¹¹⁷ 13 C.F.R. § 121.201, NAICS code 519190.

receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

40. This Order does not impose any new or modified reporting or recordkeeping requirements. However, service providers that are required to comply with the Commission's LNP requirements are now required to exchange these standard 14 data fields during the simple port ordering process. For many providers, this is less than the number of fields they were previously exchanging. However, for some providers, this may be greater than the number of fields they were previously exchanging during the simple port ordering process in order to accomplish a port.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

41. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.¹¹⁹

42. In the *Porting Interval Order and Further Notice*, the Commission sought comment on the benefits and burdens, especially the burdens on small entities, of adopting any new rules regarding the porting process.¹²⁰ However, we must assess the interests of small businesses in light of the overriding public interest in ensuring that all consumers benefit from local number portability. The requirements adopted in today's Order implement the one-business day porting interval adopted in the Commission's *Porting Interval Order*.¹²¹ In that Order, the Commission concluded that reducing the porting interval for simple wireline-to-wireline and simple intermodal ports to one business day was necessary to enable customers to port their numbers in a timely fashion and to enhance competition.¹²² The steps the Commission takes today are critical to ensure that carriers are able to implement the one-business day simple porting interval in a timely manner. The Commission did not receive comments regarding significant alternatives to the steps we take today for small providers as there was general industry consensus for our actions. Further, in order for the steps we take today to be effective in ensuring that providers are able to accomplish simple ports in one business day, it is necessary that *all* providers follow the standardized fields, provisioning flows, and mandatory business hours. We note, however, that the Commission has allowed small providers a longer period of time for implementing the one-business day porting interval. Specifically, small providers are required to implement the reduced one-business day porting interval for simple wireline and simple intermodal ports no later than February 2, 2011.

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¹¹⁸ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 514199 (issued Oct. 2000). This category was created for the 2002 Economic Census by taking a portion of the superseded 1997 category, "All Other Information Services," NAICS code 514199. The data cited in the text above are derived from the superseded category.

¹¹⁹ See 5 U.S.C. § 603(c).

¹²⁰ See *Porting Interval Order and Further Notice*, 24 FCC Rcd at 6095, para. 19.

¹²¹ *Id.* at 6089, para. 8.

¹²² See *id.* at 6089, para. 8.

43. Further, small providers have options for seeking modification of the new LNP interval requirements. For example, under section 251(f)(2) of the Act, a LEC “with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide may petition a State commission for suspension or modification of the application of the requirements” of section 251(b), which includes the “duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”¹²³ Providers may also apply for a waiver of the one-business day porting interval under the Commission’s rules.¹²⁴ To demonstrate the good cause required by the Commission’s waiver rule, a provider must show with particularity that it would be unduly economically burdensome for the provider to implement the reduced porting interval. In making this showing, a provider should address the number of port requests it receives as well as the specific costs that complying with the reduced porting interval would impose.

44. **Report to Congress:** The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹²⁵ A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.¹²⁶

¹²³ See 47 U.S.C. §§ 251(f)(2), 251(b).

¹²⁴ See 47 C.F.R. § 1.3.

¹²⁵ See 5 U.S.C. § 801(a)(1)(A).

¹²⁶ See 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244; *Telephone Number Portability*, CC Docket No. 09-116

The Commission is taking an important step to ensure that consumers can quickly and easily switch their telephone service providers if they want. The Commission today completes the process of requiring carriers to transfer customers' telephone numbers to their new service provider in a single business day. This *Order* demonstrates that smart government action can promote competition and benefit consumers.

While this *Order* provides many of the technical details that carriers need to port telephone numbers in a streamlined manner, it is first and foremost about consumers. Though few Americans may care whether their phone company has to provide arcane information such as the "Purchase Order Number" or the "Requisition Type and Status," we all understand what it means if our request to switch to a new service provider is held up for multiple days. Thanks to today's decision, that won't happen any more.

This *Order* also is about competition. Consumers want carriers to compete on service quality and price. Consumers want phone companies to retain them as customers because they provide an excellent service, not because it's too difficult to switch service providers.

I am pleased that the item reflects a good amount of consensus. While there was not complete agreement among industry, many service providers agreed on a majority of the information fields that are necessary to ensure seamless transitions from one carrier to another. I appreciate the industry's active participation in the proceeding and believe the *Order* benefits greatly from companies' hands-on experience. It shows what can happen when stakeholders roll up their sleeves and work with the Commission on important goals.

I thank Commissioner Copps for his work as Acting Chairman last May in beginning this process, and the staff for their hard work in carrying it out. While the average consumer may not spend much time on the details, I appreciate that staff do.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244; *Telephone Number Portability*, CC Docket No. 95-116

I am pleased to support today's Order, which provides the final steps needed for carriers to implement the one-business day local number porting interval for wireline-to-wireline and intermodal ports that this Commission unanimously adopted just over one year ago when I was Acting Chairman. In the 1996 Telecommunications Act, Congress imposed a number portability obligation on providers so consumers could retain their phone numbers when switching carriers. This was both consumer-friendly and competition-friendly. But not only do consumers have to be able to port their numbers, the providers need to complete the ports in a timely manner. The FCC figured this out over a dozen years ago when it implemented a four-business day interval, and I think the shortened interval we adopted in last year's *Porting Interval Order* was a much-needed and achievable update. I am pleased that, as promised, this Order adopts the necessary steps—standardized data fields for simple ports and the North American Numbering Council (NANC) recommendations for porting process provisioning flows and for addressing the one-business day requirement—to make the one-business day interval happen. No doubt, there are always other issues to be considered—the interval for some non-simple ports or outstanding questions regarding CPNI to name just two. But, at this time, the NANC, the FCC staff and the Chairman's office have done great work in preparing companies to implement this, starting in August. I thank you all, and my colleagues, for the hard work put into finishing this process. I look forward to witnessing and experiencing the many benefits that will, I am confident, flow from the implementation of this change.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244; *Telephone Number Portability*, CC Docket No. 95-116

A year ago - almost to the day (May 13, 2009) - the Commission approved an order that reduced the porting interval for simple wireline ports and simple intermodal ports from four days to one day. I wholeheartedly supported that decision because it empowered consumers to enjoy the benefits of marketplace choice almost as quickly as technology allows. At that time, the Commission provided a generous and sensible glide path for implementing the change which first called for recommendations from the North American Numbering Council (NANC). In response to last year's order, NANC submitted its recommendations, additional comments were filed, and we are now ready to move forward. Accordingly, I am pleased to join my colleagues in establishing the implementation deadlines of August 2, 2010 for the large carriers and February 2, 2011 for the small carriers.

This order finalizes some key outstanding issues such as clarifying, in great detail, what the Commission means when it says a port must be completed in "one day." For example, the order explains that business days are Monday through Friday (excluding holidays) from 8:00 a.m. to 5:00 pm. Additionally, we set forth that if a complete and accurate request for a port - Local Service Request (LSR) - is received before 1:00 p.m., the number must be ready to port at midnight. However, any LSR received after 1:00 p.m. triggers a requirement that the port be ready to port the next day at midnight. Such information may seem basic but it is critical to ensure that all stakeholders are operating under the same assumptions to avoid confusion and delays.

I commend representatives from consumer groups and those in industry who participated in the NANC working group. The policy of one-day porting is a simple one but involves complex, technical planning behind the scenes to ensure that consumers experience a seamless process. As such, the advice and comments from experts were critical to this process. Second, I would like to recognize Commissioner Copps for his leadership on this issue because he pushed through the resolution for a one-day porting requirement while he was Acting Chairman. Finally, I applaud Chairman Genachowski and his staff for following through with the final necessary implementation requirements. This is a positive development for competition and, ultimately, for America's consumers who benefit from it.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244; *Telephone Number Portability*, CC Docket No. 09-116

For many years the Commission has required that providers allow consumers to retain their telephone numbers when switching carriers, a pro-consumer and pro-competitive policy. However, for wireline numbers, consumers have had to wait up to four days to switch providers. With this Order, consumers will be able to switch their wireline provider or cut the cord and move their wireline number to a wireless carrier within one business day. While I look forward to the day when the wireline porting interval is as short as the wireless-to-wireless interval (which is only two and one-half hours when consumers change wireless providers), I am pleased that we are removing the current untenable delay of three days for simple wireline ports, thereby allowing consumers who choose to switch providers to do so sooner than ever before. I commend industry for working with NANC to implement the new one-business day interval for simple wireline ports.

**STATEMENT OF
COMMISSIONER MEREDITH A. BAKER**

Re: *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244; *Telephone Number Portability*, CC Docket No. 95-116

I support this item today because efficient and timely local number portability is important to promote competition among service providers to the benefit of consumers. But perhaps more importantly, consumers care about numbers. They care about retaining their numbers when they switch providers and they care that porting their numbers goes as smoothly as possible. We take an important step toward improving the efficiency and timeliness of simple ports with this Order today. I thank the NANC members for their work on this issue and I commend the bureau staff for their fine work on this proceeding.